

MEMO ENDORSED**MEMO ENDORSED**
(see p. 2)MICHAEL A. CARDOZO
Corporation CounselTHE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET, Room 2-125
NEW YORK, NY 10007-2601CHRISTOPHER L. HEER
Assistant Corporation Counsel
Phone: (212) 788-0960
Fax: (212) 788-8877
Email: cheer@law.nyc.gov

August 27, 2008

BY FACSIMILEHonorable Naomi R. Buchwald
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street, Room 2270
New York, New York 10007RECEIVED IN CHAMBERS
OF NAOMI REICE BUCHWALD

AUG 27 2008

UNITED STATES DISTRICT JUDGE

Re: Tucker v. City of New York, et al.
07 Civ. 10367 (NRB) (JCF)
Our No. 2007-039695USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 9/16/08

Dear Judge Buchwald:

I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel for the City of New York, assigned to defend the City of New York ("City"), New York City Department of Health and Mental Hygiene, and Thomas R. Frieden ("City Defendants") in the above-referenced action. I write to respectfully request that City Defendants' time to file their opposition to plaintiff's Motion to Compel production of information concerning a continuing investigation by the City's Department of Investigation ("DOI") be extended from September 1, to October 2, 2008. This is City Defendants' first request for an enlargement of time to respond to plaintiff's Motion to Compel and plaintiff does not consent to this request.

Plaintiff's counsel declined to give consent to this request because City Defendants had agreed to the briefing schedule concerning the instant motion to compel and because plaintiff's counsel contends that the open and active investigation by the City Department of Investigation into his client's claims has taken too long.

This enlargement of time is necessary, because on August 11, 2008 I was assigned to a case scheduled for trial commencing on September 8, 2008, Shapiro v. New York City Dep't of Education et al., 06 Civ. 1836 (JSR). This trial has eight remaining plaintiffs and it is expected to last for three weeks. In discussion with Plaintiff's counsel on August 12, 2008 about the instant briefing schedule, plaintiff's counsel was apprised that just a day earlier I had

HONORABLE NAOMI R. BUCHWALD

United States District Judge

Tucker v. City of New York, et al.

07 Civ. 10367 (NRB) (JCF)

August 26, 2008

Page 2

MEMO ENDORSED

been assigned the eight plaintiff trial. While I had anticipated preparing the papers in opposition to this motion by the original September 1, 2008 date, I have been unable to do so due to the extraordinary amount of time needed to prepare for this trial.

In addition, the motion to compel in the instant case involves documents and information concerning a continuing investigation by DOI. As the Court and plaintiff are aware, DOI is in the process of drafting its closing report and its investigations are inherently sensitive. See In Re Department of Investigation, 856 F.2d 481, 484 (2d Cir. 1988). Plaintiff was given permission to move on July 23, 2008, one month before the motion was served. Plaintiff's motion is based solely on a five page document (unsworn, although it submits facts). City Defendants' opposition papers will include a declaration from DOI personnel as well as an opposition memorandum of law. The City Defendants' papers are, therefore, more complicated than plaintiff's moving papers.

It should also be noted that the contents of the DOI investigation have not impeded or hindered discovery in this case. Plaintiff is free to depose witnesses concerning the incidents at issue in the complaint (other than the DOI investigation itself). Documents (other than DOI investigatory documents) have been produced. Thus, discovery is continuing apace towards conclusion, as is the DOI investigation itself.

Accordingly, City Defendants request that the schedule for the motion to compel be extended by one month and respectfully propose the following remaining briefing schedule:

Defendants' Opposition:	October 2, 2008
Plaintiff's Reply:	October 9, 2008

Thank you for your consideration of this request.

Respectfully submitted,

[Signature]
Christopher L. Heer (CH 1086)
Assistant Corporation Counsel

cc: Walker G. Harman
1350 Broadway, Suite 1510
New York, New York 10018
(By Facsimile)

So Ordered with the understanding that if counsel's trial ends earlier than anticipated that defendant's opposition is due five (5) days after the trial or settlement.
So Ordered;
[Signature]
9/3/08

MEMO ENDORSED